

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS SKOWRONSKI, as Next Friend of  
BRODERICK SKOWRONSKI, Minor, and  
EMILY SKOWRONSKI,

UNPUBLISHED  
March 14, 2006

Plaintiffs-Appellants,

v

MUNSON MEDICAL CENTER; RENEE  
JACOBSON, RN, GRAND TRAVERSE  
OBSTETRICS & GYNECOLOGY, PC, and  
DR. LAURA DANZ,

No. 257538  
Grand Traverse Circuit Court  
LC No. 00-021015-NH

Defendants-Appellees.

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Before: Bandstra, P.J., and White and Hood, JJ.

PER CURIAM.

Plaintiff<sup>1</sup> appeals as of right the trial court order denying his motion for relief from a grant of summary disposition in favor of defendants, after plaintiff's expert witnesses were stricken as a discovery sanction. We affirm.

In an interlocutory appeal to this Court, plaintiff appealed by leave granted the trial court order striking expert witnesses as a discovery sanction. *Skowronski v Munson Med Ctr*, unpublished opinion per curiam of the Court of Appeals, issued June 3, 2003 (Docket No. 237834), slip op pp 1-2. This Court summarized the relevant facts:

This appeal concerns discovery sanctions. On January 17, 2001, the court entered a civil scheduling order providing that plaintiffs were to disclose their experts by April 30, 2001.

Defendants were allowed to depose plaintiffs' experts and then disclose their experts no later than June 29, 2001. There were typical delays in scheduling

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<sup>1</sup> Because of the unrelated death of plaintiff Emily Skowronski, we refer to Thomas Broderick as the singular plaintiff.

depositions. Defendants served plaintiffs with interrogatories for their expert witnesses and subsequently filed a motion to compel answers. The motion was heard on October 15, 2001, and the court ordered that answers be provided by 5 p.m. on October 18, 2001.

Plaintiffs faxed unsigned and incomplete answers to defense counsel on October 19, 2001. They did not provide requested curriculum vitae or written expert reports. The deposition of Dr. James O'Leary was scheduled for October 20 in Asheville, North Carolina. Other depositions were scheduled for October 22 in Naples, Florida, October 29 in Los Angeles, November 1 in Hicksville, New York, and November 7 in Overland Park, Kansas. Trial was scheduled to begin December 11, 2001.

In an October 17 letter, plaintiffs' counsel cancelled the October 22 deposition of Dr. Gatewood, stating that he would be in trial. When plaintiffs did not timely provide interrogatory answers, defense counsel cancelled the October 20 deposition of Dr. O'Leary and moved to strike plaintiffs' experts. The remaining scheduled expert depositions were cancelled.

The court heard argument on the motion on October 29, 2001. Giving plaintiffs the benefit of the doubt regarding the due date for the interrogatory answers, the court still found the substance of the answers was inadequate. The sequence of discovery was clearly set out in the scheduling order. The answers given, even if timely and in correct form, would not have made the depositions meaningful. Plaintiffs displayed a lack of candor in why Dr. Gatewood's deposition was withdrawn, and by withdrawing him at such a late date, it was understood that he would not be a witness. The interrogatory answers were evasive, and they were inconsistent with the court rules and the court's order. The court declined to dismiss the case, but it ruled that the individuals whose interrogatories were to be answered prior to 5 p.m. on October 18, 2001, would not be allowed to testify. [*Id.*]

This Court found that the trial court did not abuse its discretion in imposing the sanction of striking plaintiff's expert witnesses for the discovery violations:

In the present case, the trial court gave full consideration to the relevant factors [in determining a just and proper sanction]. It found that the [discovery] violations were not merely accidental, and they occurred over a long period. Defendants were prejudiced because they would have traveled great distances to attend depositions without the information needed to participate. Without the interrogatory answers, they appropriately cancelled the depositions, and there was little time to reschedule before the case evaluation and trial. Plaintiffs did not cure the defects in a timely fashion and lesser sanctions would not solve the problems when trial was imminent. Under these circumstances, there is no showing that the trial court abused its discretion in imposing its sanction for the discovery violations. [*Id.* at slip op pp 2-3.]

This Court denied plaintiff's motion for reconsideration<sup>2</sup> and our Supreme Court denied leave to appeal.<sup>3</sup>

Plaintiff moved for relief from the trial court's imposition of the discovery sanction of striking his expert witnesses. Defendants moved for summary disposition under MCR 2.116(C)(8) on the basis that absent expert witnesses, plaintiff failed to state a claim upon which relief could be granted. Plaintiff argued that, even if the trial court did not grant complete relief, it should at least allow plaintiff to proceed by calling expert witnesses to testify against Jacobson and Munson because they were not entitled to benefit from discovery sanctions because they had not filed any discovery requests. When the trial court denied plaintiff's motion for relief, plaintiff conceded to summary disposition: "if it's your order that we can not call experts then we fail to establish a prima facie case."

We review de novo as a question of law the applicability of the law of the case doctrine. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). "The law of the case doctrine provides that 'if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same.'" *Kalamazoo v Dep't of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW2d 475 (1998), quoting *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 454; 302 NW2d 164 (1981). "The law of the case doctrine applies only to questions actually decided in the prior decision and to those questions necessary to the court's prior determination." *Kalamazoo, supra* at 135. Additionally, "[t]he rule applies without regard to the correctness of the prior determination." *Id.*

Plaintiff has failed to demonstrate that the issues he raises on appeal are new or were not decided, either expressly or by implication, by this Court in the previous appeal. There, this Court determined that the trial court did not abuse its discretion in striking plaintiff's expert witnesses as a discovery sanction. Additionally, it is evident from the earlier opinion that plaintiff's entire suit was at stake, not just the action against defendant Danz and her practice. Finally, plaintiff's third issue on appeal is simply a reprise of the interlocutory appeal.

Further, this Court denied plaintiff's motion to reconsider the appeal and our Supreme Court denied plaintiff's request for leave to appeal. Plaintiff offers nothing to suggest that those considering the case did not understand that affirming the trial court decision to strike plaintiff's experts would result in summary disposition for all defendants.<sup>4</sup> Thus, plaintiff has not shown

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<sup>2</sup> *Skowronski v Munson Med Ctr*, unpublished order of the Court of Appeals, entered July 25, 2003 (Docket No. 237384).

<sup>3</sup> *Skowronski v Munson Med Ctr*, 469 Mich 1044; 679 NW2d 70 (2004).

<sup>4</sup> In fact, the Court of Appeals in the previous appeal expressly recognized that plaintiffs so argued: "[o]n appeal, plaintiffs argue that the trial court abused its discretion in striking the expert witnesses where the result will be a directed verdict for defendants." *Skowronski, supra*, slip op p 2.

that any of the three issues presented on appeal fall outside of or are not controlled by the law of the case doctrine.

We affirm.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Karen M. Fort Hood